

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§
	§ No. 451, 2010
Plaintiff Below-	§
Appellant,	§
	§ Court Below-Court of Chancery
v.	§ of the State of Delaware
	§ C.A. No. 5121
PERRY PHELPS et al.,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: August 6, 2010
Decided: September 10, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 10th day of September 2010, upon consideration of the submissions of the parties and the record below, it appears to the Court that:

(1) The plaintiff-appellant, James Arthur Biggins, has filed an appeal from a matter currently pending in the Court of Chancery.¹ For the reasons that follow, we conclude that the appeal is interlocutory and, therefore, must be dismissed.

(2) Our review of the record below reflects that, on February 25, 2010, Biggins filed a “petition for emergency preliminary injunctive relief”

¹ Although Biggins has captioned his filing as a “petition for a writ of mandamus,” our review of the record leads us to conclude that Biggins intended it to be a notice of appeal.

in the Court of Chancery in No. 5121. On July 20, 2010, the judicial case manager in the Court of Chancery notified Biggins that, in order for his case to proceed, he had to direct the Court of Chancery to prepare the appropriate summonses for service upon each defendant in the case. The case manager attached a form with instructions for Biggins to follow. The record does not reflect any further action, either by Biggins or by the Court of Chancery, after July 20, 2010. Biggins then filed this appeal. Biggins' notice of appeal does not reference any final order of the Court of Chancery, nor has Biggins attached any final order of the Court of Chancery to his notice of appeal.

(3) The record reflects that a final order has not yet been issued by the Court of Chancery in No. 5121. As such, we conclude that Biggins' appeal is interlocutory. Because Biggins has failed to comply with the procedural requirements of Rule 42 when taking an appeal from an apparent interlocutory order, we have no jurisdiction to consider his appeal.² Therefore, Biggins' appeal must be dismissed.³

² *Stroud v. Milliken Enterprises, Inc.*, 552 A.2d 476, 481-82 (Del. 1989).

³ This is Biggins' second interlocutory appeal in this case. This Court dismissed his first interlocutory appeal in *Biggins v. Phelps et al.*, Del. Supr., No. 702, 2009, Steele, C.J. (Jan. 6, 2010).

NOW, THEREFORE, IT IS ORDERED that the within appeal is
DISMISSED.⁴

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ Supr. Ct. R. 29(b).